

I hereby certify that this paper (along with any document or fee referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the Commissioner of Patents, Washington, D.C. 20231.

November 13, 2001

Date _____

Marcee Lundeen
Marcee Lundeen

IN RE APPLICATION:

DOCKET NO.: CEL-97A

INVENTORS:

Michael J. Cleary, et al

SERIAL NO.: 09/681,968

FILED: June 30, 2001

GROUP ART UNIT:

FOR: CUSTOMER-CONTROLLED
INVENTORY ACCESS

EXAMINER:

**RESPONSE TO NOTICE TO FILE MISSING PARTS AND PETITION
UNDER 37 C.F.R. 1.47(b) TO PROSECUTE APPLICATION ON BEHALF
OF NON-SIGNING INVENTOR**

Honorable Commissioner for Patents
Box Patent
Washington, D.C. 20231

Dear Sir:

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JAN 25 2002

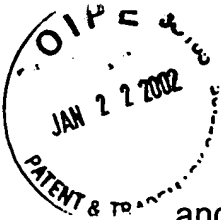
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DEPUTY A/C PATENTS

In response to the Notice to File Missing Parts of Nonprovisional Application dated July 11, 2001, for which a two month extension of time is hereby petitioned, applicant submits herewith four (4) of the signed original copies of the declarations for the five (5) named inventors. Jason R. Hall has not signed the declaration, and the remaining inventors hereby petition to prosecute the application without the signature of Hall, under Rule 47(a)

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and/or the assignee hereby petitions to prosecute the application under Rule 47(b).

Please charge deposit account 501285/DNL/CEL-97A in the amount of \$130 in payment of the surcharge for late filing of the inventors' declarations, and \$400 for the extension of time.

A request to sign the application was sent to Hall on July 10, 2001, by undersigned counsel. A copy of the letter is enclosed herewith. Hall received the letter by certified mail July 20, 2001, as indicated by his signature on the postal return receipt, a copy of which is enclosed herewith. Undersigned counsel never heard from Hall and never received the signed declaration from him, even though a postage prepaid envelope was provided to Hall for its return along with instructions for calling collect. Hall has apparently refused to sign and/or return the declaration to undersigned counsel for filing in this case, and/or cannot be reached. The last known address and telephone number of Hall are 3127 Landover Dr., Carrollton, Texas 75007, and (972) 939-8456. The other four (4) inventors hereby petition under Rule 47(a) to prosecute the application without Hall's signature.

In the alternative, assignee CellStar, Ltd. elects to prosecute the application under Rule 47(b). A copy of the assignment from the four signing inventors and their employer, CellStar Corporation, to CellStar, Ltd., is enclosed herewith. Mr. Hall was employed by CellStar Corporation in Carrollton, Texas at all times pertinent to the discovery of the invention, and his part in the discovery thereof was within the specific scope and duties of his employment. Employees who are "hired to invent" in the state of Texas have an obligation under the law to assign their inventions and patent rights to their employer; such inventions are the rightful property of the employer. *See Atlas Brick Co. v. North*, 2 S.W. 2d 980 (Tex. Civ. App. 1928).

It is necessary for assignee CellStar, Ltd. to prosecute the application to preserve the rights of the parties and/or prevent irreparable damage, since the application will otherwise go abandoned, a loss of priority to the provisional filing date will be lost, and there has been intervening commercialization of the invention that could bar subsequent patent applications under 35 U.S.C. 102(b) if not entitled to priority.

Please charge deposit account 501285/DNL/CEL-97A in the amount of \$130 in payment of the fee for the petition under Rule 47. Any additional fees required in connection herewith are conditionally authorized to be charged to deposit account 501285/DNL/CEL-97A upon which undersigned has authority to draw.

Signing inventors and assignee respectfully request that they be allowed to prosecute the application without joinder of Hall, that the Rule 47 petition be granted, and that the application be examined on the merits.

Respectfully submitted,



Daniel N. Lundeen
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UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/681,968	06/30/2001	Michael J. Cleary	CEL-97

CONFIRMATION NO. 2589

FORMALITIES LETTER



OC000000006283165

23508
LUNDEEN & ARISMENDI, LLP
PO BOX 131144
HOUSTON, TX 77219-1144

Date Mailed: 07/11/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 130.

*A copy of this notice **MUST** be returned with the reply.*

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Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jason R. Hall
3127 Landover Dr.
Carrollton, TX 75007

2. Article Number (Copy from service label)

7099 3220 0001 8904 3726

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

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